IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1917 OF 2007

Rajendra Shripatrao Mohite ....Petitioner
V/s
Jainuddin Hasan Nayakwadi..... ....Respondent.

Mr.T.S.Ingale, Adv. For the petitioner.

Ms.Manjiri S. Parasnis, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
22/8/07

PC:

The present petitioner is the original plaintiff who filed a suit claiming that the disputed wall in question is absolutely owned by the plaintiff whereas the defendant contended that it is a common wall and hence the defendant rested the structure on the said wall. The trial Court dismissed the suit and aggrieved thereby petitioner carried an appeal. The Appellate Court at the behest of the petitioner framed additional issues and remitted the matter yet again to the trial Court for recording evidence and rendering findings of newly framed issues. Accordingly both the parties adduced evidence and trial Court after recording its finding on the newly framed issues remitted the case to the First Appellate Court. When the matter was pending before the trial Court the petitioner sought to place on record a document in the form of rent note. Same was permitted by the trial Court. However the

Appellate Court found the trial Court to be wanting in jurisdiction to permit the filing of the said document. Hence order passed by the trial Court was set aside by the Appellate Court. In the appeal the petitioner filed an application under order 41 rule 27 of the Code of Civil Procedure claiming that the rent note establishes the claim of plaintiff that the wall in question is exclusively owned by the plaintiff and is not a common wall. The rejection of the said application has given rise to the present writ petition. Besides the reasons recorded by the First Appellate Court for rejecting the application I have perused the rent note which is placed on record. The rent note is executed by the predecessor-in-title of the defendant. The said document only goes to create lease in favour of predecessor-in-title. Prima facie the said document does not go to establish the case of the petitioner that the wall in question is exclusively owned by the plaintiff. I do not find the said document to be relevant so as to warrant remand of the proceedings for the second time. Hence there being no merit in the writ petition same is summarily dismissed.

22.8.07